

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACQUELINE WALKER,

Defendant-Appellant.

UNPUBLISHED

October 3, 1997

No. 187849

Recorder's Court

LC No. 95-000280 FY

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

Defendant was convicted of intentionally discharging a firearm at an occupied dwelling, MCL 750.234b; MSA 28.431(2), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and sentenced to terms of imprisonment of six months to four years and of two years, respectively. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant failed to make a testimonial record below in conjunction with a timely motion for new trial. Moreover, this Court denied defendant's motion for a remand for the purpose of creating such a record. Accordingly, our review of defendant's ineffective assistance of counsel claim is limited to the record. *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987).

The record supports a conclusion that defendant's failure to testify was a matter of trial strategy. *People v Hoyt*, 185 Mich App 531, 537-538; 462 NW2d 793 (1990). On this record, defendant has failed to overcome the strong presumption that trial counsel rendered effective assistance. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). In any event, defendant, who admits being advised of her right not to testify, was surely made aware of her correlative right to testify in her own defense. *Guilty Plea Cases (People v Nicholson)*, 395 Mich 96, 123; 235 NW2d 132 (1975). Nor has defendant established that counsel was ineffective in failing to secure the presence of certain witnesses.

* Circuit judge, sitting on the Court of Appeals by assignment.

Additionally, defendant has failed to demonstrate the existence of newly discovered evidence that would entitle her to a new trial. *People v Johnson*, 451 Mich 115, 118 n 6; 545 NW2d 637 (1996); *People v Taylor*, 383 Mich 338, 362; 175 NW2d 715 (1970); *Long v Chelsea Community Hospital*, 219 Mich App 578, 588; 557 NW2d 157 (1996); *Harkins v Dep't of Natural Resources*, 206 Mich App 317, 323; 520 NW2d 653 (1994).

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood